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11 Attorneys for Plaintiff
12 JUAN CUEVAS

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN JOSE DIVISION
16

17 JUAN CUEVAS,

18 Plaintiff,

19 v.

20 ALTAS REALTY/FINANCIAL SERVICES,
21 INCORPORATED, a California corporation,
dba ATLAS REALTY, dba ATLAS
22 FINANCIAL SERVICES, ALVIN CLAIR
SILBERNAGEL, SAMANTHA TREVINO,
23 WORLD SAVINGS, INC, dba WORLD
SAVINGS BANK, FSB, and DOES 1 to 100,

24 Defendants.
25
26
27
28

Case No. 5:07-cv-02814 (JF)

**FIRST AMENDED COMPLAINT
FOR VIOLATIONS OF THE TRUTH
IN LENDING ACT; CALIFORNIA
BUSINESS & PROFESSIONS CODE
§ 17200 *ET SEQ.*; CALIFORNIA
CIVIL CODE § 1750 *ET SEQ.*;
CALIFORNIA CIVIL CODE § 1632;
& FOR FRAUD; NEGLIGENCE
MISREPRESENTATION;
NEGLIGENCE; UNJUST
ENRICHMENT & RESCISSION**

DEMAND FOR JURY TRIAL

1 Plaintiff Juan Cuevas (hereinafter "Plaintiff" or "Mr. Cuevas") alleges as follows:

2 **THE PARTIES**

3 1. Mr. Cuevas is an individual that currently resides in San Jose, County of Santa
4 Clara, California.

5 2. Defendant Atlas Realty/Financial Services Incorporated, dba Atlas Realty and
6 Atlas Financial Services (hereinafter "Atlas") is a corporation organized and existing under the
7 laws of the State of California. On information and belief, Atlas' principal place of business is in
8 the State of California, located at 2020 S. Bascom Avenue, Suite C, in Campbell, California. On
9 information and belief, at all relevant times throughout this complaint, Defendant Atlas held itself
10 out to be a "full service" mortgage broker not affiliated with any one mortgage lender.

11 3. Defendant Alvin Clair Silbernagel ("Silbernagel") is an individual residing in the
12 State of California and a real estate broker licensed by the State of California. On information
13 and belief, Silbernagel is the licensed designated officer/broker for Defendant Atlas.

14 4. Defendant Samantha Trevino (hereinafter "Trevino") is an individual residing in
15 the State of California. On information and belief, Trevino is a loan officer and licensed
16 salesperson for Defendant Atlas.

17 5. Defendant World Savings, Inc., dba World Savings Bank, FSB (hereinafter
18 "World Savings Bank") is a corporation organized and existing under the laws of the State of
19 California. On information and belief, World Savings Bank regularly does business in Santa
20 Clara County, and its principal place of business is 1901 Harrison Street, in Oakland, California.
21 On information and belief, Defendant World Savings Bank was engaged in the business as a
22 creditor who regularly engaged in the making of mortgage loans, payable by agreement in
23 installments or for which the payment of a finance charge is or may be required, whether in
24 connection with loans, sales of property or services, or otherwise.

25 6. Mr. Cuevas has yet to establish the true identities of Defendants sued herein as
26 Does 1 through 100, inclusive, and therefore sues those Defendants by fictitious names. Plaintiff
27 will amend this complaint to allege their true identities as they become known. Plaintiff alleges
28 on information and belief that each of the fictitiously named Defendants is liable to Plaintiff in

1 some manner for the matters alleged herein.

2 7. On information and belief, at all times relevant herein, each of the Defendants was
3 the agent, servant and/or employee of each other defendant. On information and belief, each
4 Defendant was acting within the course and scope of such agency or employment in doing the
5 things alleged.

6 **JURISDICTION**

7 8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because
8 Plaintiff has alleged causes of action for violations of the Federal Truth in Lending Act, pursuant
9 to 15 U.S.C. § 1601 *et seq.*

10 9. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 to hear and
11 determine Plaintiff's state law claims because those claims are related to Plaintiff's federal
12 claims, arise out of a common nucleus of operative facts and form part of the same case or
13 controversy under Article III of the United States Constitution.

14 **VENUE**

15 10. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c) because the
16 Defendants committed each of the wrongful acts alleged herein within this judicial district and
17 reside in this judicial district.

18 **INTRA-DISTRICT ASSIGNMENT**

19 11. Intra-district assignment in San Jose, California is proper because the unlawful
20 conduct that gives rise to the alleged claims occurred in Santa Clara County.

21 **STATEMENT OF THE CASE**

22 12. Defendants have acted in concert to defraud Mr. Cuevas, a fifty-nine year-old
23 Spanish speaking man of Mexican heritage, of his greatest single asset – his home. Defendants,
24 acting through Defendant Trevino, executed a classic “bait and switch” routine by promising one
25 thing during their discussions, which occurred in Spanish, then taking advantage of his limited
26 ability to read and write English and having him sign documents written in English that did not
27 reflect the terms and conditions promised by Defendants. Defendant Trevino, representing
28 herself to be Mr. Cuevas' mortgage broker and agent, manipulated Mr. Cuevas' trust by

1 pressuring him to enter a “transaction” arranged by the Defendants. The true terms of this
2 transaction were misrepresented to Mr. Cuevas prior to closing. Defendants’ transaction was not
3 a fair bargained-for deal, but a ruse designed to deprive Mr. Cuevas of his home of more than 15
4 years.

5 13. Further, on the day Mr. Cuevas signed the closing documents of the
6 aforementioned transaction, Defendants provided him with unsigned copies of the document
7 notifying him of his right to rescind which contained contradictory and confusing information.
8 Specifically, the transaction date and the expiration date were incorrectly entered creating the
9 impression that Mr. Cuevas had more time in which to rescind. To make matters worse,
10 Defendants later made handwritten changes to these dates and then forged Mr. Cuevas’ initials on
11 the documents to make the record in the file appear as though Mr. Cuevas had received the proper
12 statutory notice of his rescission rights. In fact, Mr. Cuevas never received a copy of the
13 “corrected” notice of right to rescind nor was he ever notified of these changes.

14 14. Adding to the confusion, funds were disbursed to Mr. Cuevas prior to the
15 expiration of the noticed rescission period.

16 15. Mr. Cuevas is now forced to file the instant action to avoid losing his home and
17 recover damages caused by the fraudulent conduct and statutory violations engaged in by
18 Defendants.

19 **STATEMENT OF FACTS**

20 16. Mr. Cuevas is a fifty-nine year-old man and resides at a home located at 672
21 Swallow Drive, San Jose, California 95111. Mr. Cuevas purchased his home in 1991.

22 17. Mr. Cuevas was born and raised in Mexico; he is a Spanish speaker who reads and
23 writes almost no English.

24 18. In February of 2006, Mr. Cuevas began to discuss the possibility of taking out a
25 refinance loan with Defendant Trevino, a mortgage broker. These, and all future communications
26 with Defendant Trevino, were exclusively in Spanish.

27 19. During their discussions, Mr. Cuevas informed Defendant Trevino that he and his
28 wife made a total of \$3200 per month, their existing mortgage payment was \$2755 per month,

1 and they were really struggling to make the payments and he wanted to see if he could refinance
2 to get a lower monthly payment. Mr. Cuevas' existing loan on the property was for \$373,000.

3 20. Defendant Trevino responded by saying not only could she lower his payment, but
4 she could also get him some extra cash out of the house. Defendant Trevino asked Mr. Cuevas
5 how an extra \$40,000 sounded to him.

6 21. Mr. Cuevas made it clear that he was primarily interested in lowering his monthly
7 payment because he was having trouble making the existing payments, that he did not want the
8 rate to go up and down, and that he wanted taxes and insurance to be included in his payments.

9 22. In order to lure Mr. Cuevas into a refinancing through Defendants, Defendant
10 Trevino made at least the following representations:

- 11 a. that she would obtain the best available loan for Mr. Cuevas;
- 12 b. that she would obtain a loan that was affordable for Mr. Cuevas;
- 13 c. that Mr. Cuevas could take out an additional \$40,000 and the payments
14 would still only be \$1600 per month, \$1800 per month if he wanted taxes and insurance included;
- 15 d. that the interest rate would only go up once each year, and that the
16 payment would only go up by \$100-\$200 for each of the first 5 years; and
- 17 e. that the payments were interest only, and that Mr. Cuevas could pay in
18 extra money each month that would go directly towards the principal amount.

19 23. Mr. Cuevas relied on these representations and agreed to be represented by
20 Defendants Trevino, Silbernagel and Atlas, reasonably believing them to be honest brokers acting
21 on his behalf.

22 24. Despite reassurances to Mr. Cuevas that Defendants would find the best
23 refinancing deal possible for Mr. Cuevas, Defendant Trevino steered him directly to the
24 remaining Defendants. On Defendant Trevino's urging, Mr. Cuevas submitted an application to
25 refinance his home with the Defendants.

26 25. In May 2006, Defendant Trevino advised Mr. Cuevas that he qualified for a loan
27 and that the loan papers were ready to be signed. Defendant Trevino also reiterated her earlier
28 representations that Mr. Cuevas would be getting an additional \$40,000 out of the property; that

1 the payments would be \$1800 per month, including taxes and insurance; that the interest rate
2 would only go up once every year and that the payment would only go up by \$100-\$200 for each
3 of the first 5 years; and that the payments were interest only, but that Mr. Cuevas could send extra
4 money each month that would go directly towards the principal amount.

5 26. In addition, Defendant Trevino informed Mr. Cuevas that his existing loan had a
6 prepayment penalty of \$7,000, which expired in November of 2006. Mr. Cuevas responded by
7 saying they should wait until after November to refinance so they wouldn't have to pay the
8 penalty, but Defendant Trevino responded by saying (in Spanish): "Don't worry, you will be
9 saving so much money, your payment is lower, and the value of your house is increasing" and
10 that the monthly payments would increase "no more than \$200" for each of the first five years.
11 Defendant Trevino therefore assured Mr. Cuevas that it was worth it to refinance "now," rather
12 than waiting until November.

13 27. Mr. Cuevas relied on Defendant Trevino's representations regarding the terms of
14 the proposed refinancing deal and agreed to refinance his home through Defendants.

15 28. On May 31, 2006, Mr. Cuevas signed the refinancing documentation. However,
16 despite the fact that all of Mr. Cuevas' discussions with Defendant Trevino were in Spanish and,
17 despite the fact that Mr. Cuevas speaks and reads almost no English whatsoever, all of the
18 documents presented to Mr. Cuevas were in English.

19 29. During the signing, Mr. Cuevas learned that a prepayment penalty had been added
20 to the loan. Concerned and confused, Mr. Cuevas questioned the wisdom of going forward with
21 the loan. Defendant Trevino brought Mr. Cuevas back to the table by reassuring Mr. Cuevas that
22 he was saving so much money by lowering his monthly payment that he shouldn't worry about
23 the prepayment penalty. Defendant Trevino never advised Mr. Cuevas of a number of salient
24 facts regarding the true nature of the transaction, including:

- 25 a. that the loan was a negative amortized loan, meaning that the payments had not
- 26 been set sufficiently high to pay off the interest as it accrued on the loan;
- 27 b. that the amount "interest only" Mr. Cuevas needed to pay each month to prevent
- 28 the principal from increasing was \$3,100 – nearly \$400 *more* than the \$2755

1 monthly payment he was originally seeking to reduce;

2 c. that Mr. Cuevas' monthly payment could increase *every month* after the inception
3 of the loan, not just once per year; and

4 d. that the prepayment penalty on his existing loan was \$10,253, not \$7,000.

5 30. Defendant Trevino's misrepresentations about the loan caused Mr. Cuevas to sign
6 all the documents despite the fact that he was unable to read them, and without having them
7 adequately explained to him, thereby securing a mortgage and Deed of Trust with Defendant
8 World Savings Bank on Plaintiff's home. At the time of execution, Mr. Cuevas was ignorant of
9 the falsity of Defendants' representations and believed them to be true. In reliance on
10 Defendants' representations, Plaintiff was induced to sign all the closing documents including a
11 Deed of Trust and Defendant World Savings Bank's Adjustable Rate Pick-a-Payment Loan in the
12 amount of \$437,000. Had the Plaintiff known of the actual facts, Plaintiff would not have signed
13 said documents.

14 31. Defendants' representation that Mr. Cuevas would receive an interest only loan
15 with payments of \$1800 per month, including taxes and insurance, and with the interest rate
16 changing only once every year by "no more than \$200," were false. In reality, Defendants lured
17 Mr. Cuevas into agreeing to pay a negative amortized loan with a variable interest rate, the terms
18 of which also included that the outstanding principal balance would *increase* over the course of
19 the loan to as much as \$546,250 because the regular periodic payments did not cover the full
20 amount of interest due. Also, contrary to the Defendants' representations, the variable rate
21 feature on the loan could adjust *each month* after the loan's inception.

22 32. Defendants knew that, due to the interest rate increase and Plaintiff's fixed gross
23 monthly income of approximately \$3200 per month, Mr. Cuevas would not be able to afford the
24 monthly payments. On information and belief, Defendants purposefully defrauded Plaintiff and
25 structured the loan with monthly payments they knew he could not afford. On information and
26 belief, Defendants intended for Plaintiff to fall behind on his payments, at the risk of default, so
27 he would return to Defendants in order to either refinance the loan again, resulting in more
28 origination fees for the Defendants as well as payment of the prepayment penalty to Defendants,

1 or to default, leading to foreclosure.

2 33. As a direct result of Defendants' refinancing transaction, Mr. Cuevas now faces
3 possible foreclosure and removal from his home of fifteen years.

4 34. In addition to the foregoing, after Mr. Cuevas signed the stack of documents on
5 May 31, 2006, Defendant Trevino provided Mr. Cuevas only with an unsigned copy of the
6 documents. Included among the unsigned documents were multiple copies, also unsigned, of the
7 Notice of Right to Cancel required by the Federal Truth in Lending Act. In addition to being
8 unsigned, the copies of the Notice of Right to Cancel erroneously identified the date of the
9 transaction as June 2, 2006 and the expiration of the cancellation right as June 6, 2006.

10 35. The Notice of Right to Cancel documents actually signed by Mr. Cuevas on May
11 31, 2006 also erroneously identified the date of the transaction as June 2, 2006 and the expiration
12 of the cancellation right as June 6, 2006. However, at some point after Mr. Cuevas signed the
13 documents, Defendants made handwritten changes to the Notice of Right to Cancel document.
14 Specifically, Defendants changed the date of the transaction from June 2, 2006 to May 31, 2006,
15 and the expiration of the cancellation right from June 6, 2006 to June 3, 2006. In addition,
16 Defendants *forged* the initials "JC" next to each of the handwritten changes, thus falsely making
17 it appear as though Mr. Cuevas was given the proper notice required by the Truth in Lending Act.

18 36. Adding to the confusion, Defendants improperly disbursed funds to Mr. Cuevas on
19 June 6, 2006 at 2:29 pm, more than nine hours prior to the expiration of Mr. Cuevas' right to
20 rescind as noticed.

21 37. Mr. Cuevas discovered the harmful nature of the loan when his first statement
22 showed the principal had increased despite the fact that Mr. Cuevas included an additional \$400
23 check to pay down the principal amount together with his first interest-only payment. Concerned,
24 Mr. Cuevas returned to Defendant Trevino to have the loan "fixed." Defendant Trevino stated
25 that Defendant World Savings Bank had changed the terms of the loan without her knowledge
26 and that there was nothing that she could do. When Mr. Cuevas went to Defendant World
27 Savings Bank, Defendant World Savings Bank recommended that Mr. Cuevas go and "Talk to
28 your broker."

1 45. As a result of the subject transaction, Defendants acquired an interest in Mr.
2 Cuevas' home that secures the payment or performance of an obligation.

3 46. Defendants provided Mr. Cuevas with *unsigned* copies of the Notice of Right to
4 Cancel required by the Federal Truth in Lending Act, and the *unsigned* copies erroneously
5 identified the date of the transaction as June 2, 2006 and the expiration of the cancellation right as
6 June 6, 2006.

7 47. The Notice of Right to Cancel documents actually signed by Mr. Cuevas on May
8 31, 2006 also erroneously identified the date of the transaction as June 2, 2006 and the expiration
9 of the cancellation right as June 6, 2006.

10 48. At some point after Mr. Cuevas signed the documents, Defendants made
11 handwritten changes to the Notice of Right to Cancel document, changing the date of the
12 transaction from June 2, 2006 to May 31, 2006, and the expiration of the cancellation right from
13 June 6, 2006 to June 3, 2006.

14 49. Defendants also *forged* the initials "JC" next to each of the handwritten changes,
15 thus falsely making it appear as though Mr. Cuevas was given the proper notice required by the
16 Truth in Lending Act.

17 50. The Defendants failed to properly and accurately notify Plaintiff of his right to
18 rescind the transaction, in violation of 15 U.S.C. § 1635(a) and 12 C.F.R. §§ 226.15(b) and
19 226.23(b).

20 51. The Defendants closed on the transaction, disbursing monies and performing other
21 services prior to the expiration of Mr. Cuevas' right to rescind as noticed, in violation of 12
22 C.F.R. § 226.23(c).

23 52. In accordance with the Federal Truth in Lending Act, Plaintiff is entitled to:

24 a. Rescission of the loan held by Defendants pursuant to U.S.C. §§ 1635, 1641(d)(1)
25 and 12 C.F.R. § 226.23;

26 b. The return of any money or property that has been given to anyone in connection
27 with the transaction and the termination of Defendants' security interest in the property;

28 c. Actual damages in an amount to be determined at trial;

- d. Statutory damages as provided by 15 U.S.C. § 1640; and
- e. Costs and disbursements.

WHEREFORE, Plaintiff prays for relief as set forth below.

SECOND CAUSE OF ACTION
Violation of California Civil Code § 1632
(Against All Defendants)

53. Mr. Cuevas hereby realleges and incorporates by reference the allegations of paragraphs 1 through 52 as though fully set forth herein.

54. Defendants failed to provide any disclosures in Spanish, despite the fact that the loans were negotiated in Spanish, in violation of Civil Code § 1632(c).

55. Pursuant to subdivision (k) of California Civil Code § 1632, Defendants must allow Mr. Cuevas to rescind the loan.

56. Pursuant to California Civil Code § 1691 (b), this Complaint serves as notice of rescission.

57. Mr. Cuevas is entitled to rescind the loan and equitable restitution.

WHEREFORE, Plaintiff prays for relief as set forth below.

THIRD CAUSE OF ACTION
Fraud
(Against Defendants Atlas, Trevino and Silbernagel)

58. Mr. Cuevas hereby realleges and incorporates by reference the allegations of paragraphs 1 through 57 as though fully set forth herein.

59. Defendants Trevino, Silbernagel and Atlas fraudulently and knowingly induced Mr. Cuevas to enter into the May 31, 2006 mortgage transaction by making intentional misrepresentations, failing to provide material information and/or deliberately concealing material information. As more fully alleged above, Defendant Trevino, for her own benefit on behalf of Defendants Silbernagel and Atlas, knowingly and purposely deceived Mr. Cuevas and induced him to enter into a ruinous transaction that she knew Mr. Cuevas could not repay.

60. Further, Defendant Trevino made numerous misrepresentations to induce Mr. Cuevas to enter this transaction, including the assurance that Mr. Cuevas would be getting an

1 additional \$40,000 out of the property; that the payments would be \$1800 per month, including
2 taxes and insurance; that the interest rate would only go up once only every year and that the
3 payment would only go up by “no more than \$200” for each of the first 5 years.

4 61. Mr. Cuevas has incurred and continues to incur substantial damages as a direct and
5 proximate result of his justifiable reliance into entering into a transaction with Defendants based
6 on Defendants’ intentional misrepresentations, omissions and/or concealments.

7 62. Defendants’ actions were willful, intentional, and knowing, rendering the May 31,
8 2006, mortgage and deed of trust null and void.

9 WHEREFORE, Plaintiff prays for relief as set forth below.

10 **FOURTH CAUSE OF ACTION**
11 **Negligent Misrepresentation**
12 **California Civil Code §§ 1709-1710**
(Against Defendants Atlas, Trevino and Silbernagel)

13 63. Mr. Cuevas hereby realleges and incorporates by reference the allegations of
14 paragraphs 1 through 62 as though fully set forth herein.

15 64. Defendants falsely represented to plaintiff, *inter alia* that the following
16 important facts were true:

- 17 a. that she would obtain the best available loan for Mr. Cuevas;
18 b. that she would obtain a loan that was affordable for Mr. Cuevas;
19 c. that Mr. Cuevas could take out an additional \$40,000 and the payments
20 would still only be \$1600 per month, \$1800 per month if he wanted taxes and insurance included;
21 d. that the interest rate would only go up once each year, and that the payment
22 would only go up by “no more than \$200” for each of the first 5 years; and
23 e. that the right to cancel expired on June 6, 2006.

24 65. Defendants had no reasonable basis for believing that the representations were true
25 when the representations were made.

26 66. Defendants knew these representations were false at the time they were made or
27 made the representations in reckless disregard for the truth.

28 67. Defendants intended that Mr. Cuevas rely on the misrepresentations.

1 68. Mr. Cuevas reasonably relied on defendants' misrepresentations.

2 69. As a proximate result of his reasonable reliance on defendants' misrepresentation,
3 plaintiff sustained damages in an amount to be proven at trial, but not yet ascertained.

4 70. Plaintiff's reasonable reliance on Defendants' misrepresentations was a substantial
5 factor in causing his damages.

6 71. Defendants were guilty of malice, fraud or oppression as defined in Civil Code §
7 3294 and plaintiff should therefore recover, in addition to actual damages, punitive or exemplary
8 damages to make an example of and to punish Defendants.

9 WHEREFORE, Plaintiff prays for relief as set forth below.

10 **FIFTH CAUSE OF ACTION**
11 **Breach of Fiduciary Duty**
(Against Defendants Atlas, Trevino and Silbernagel)

12 72. Mr. Cuevas hereby realleges and incorporates by reference the allegations of
13 paragraphs 1 through 71 as though fully set forth herein.

14 73. Defendant Trevino held herself and Defendants Silbernagel and Atlas out to be a
15 disinterested "full service" mortgage broker not affiliated with any one mortgage lender in her
16 solicitation through her own verbal representations. Mr. Cuevas justifiably relied on the
17 representations in becoming Defendants' client.

18 74. Under California law both consultants and mortgage brokers owe their clients a
19 fiduciary duty.

20 75. In making material misrepresentations and/or omissions in inducing Mr. Cuevas to
21 enter an entirely unfair and one-sided transaction, Defendants Trevino, Silbernagel and Atlas
22 breached their fiduciary duty.

23 76. This breach of fiduciary duty was the actual and proximate cause of all of Mr.
24 Cuevas' damages arising from this transaction.

25 WHEREFORE, Plaintiff prays for relief as set forth below.

26 **SIXTH CAUSE OF ACTION**
27 **Violation of California Business and Professions Code § 17200 et seq.**
(Against All Defendants)

28 77. Mr. Cuevas hereby realleges and incorporates by reference the allegations of

1 paragraphs 1 through 76 as though fully set forth herein.

2 78. Plaintiff is informed and believes, and on that basis alleges, that Defendants, and
3 each of them, engaged in numerous acts and/or practices of unfair competition within the state of
4 California in violation of Business and Professions Code section 17200 et seq. These acts or
5 practices include without limitation the following:

- 6 a. Offering and making Plaintiff loans, while failing to take into account his
7 ability to repay such loans;
- 8 b. Misrepresenting to Plaintiff the terms on which Defendants were willing to
9 enter into refinancing or other loan transactions with him;
- 10 c. Failing to provide required notices and copies of loan documents;
- 11 d. Falsifying information in loan applications of Plaintiff, without his
12 knowledge or consent; and

13 79. Violating the Truth in Lending Act, 15 U.S.C. § 1601 et seq; the Consumers
14 Legal Remedies Act, California Civil Code section 1750 et seq.; California Civil Code section
15 1632 et seq.; or any other applicable statute.

16 80. The above-described unlawful, unfair and fraudulent business practices present an
17 ongoing threat of injury to Plaintiff. Plaintiff continues to be financially harmed by such conduct
18 and, unless it is restrained, Defendants, and each of them, will continue to engage in such
19 conduct.

20 81. Pursuant to California Business and Professions Code section 17203 and similar
21 state statutes, Plaintiff is entitled to an order of this Court enjoining Defendants, and each of
22 them, from continuing to engage in unfair competition as defined in Business and Professions
23 Code section 17200 in the State of California and similar statutes of sister-states. Plaintiff will be
24 irreparably harmed if such an order is not granted.

25 82. Plaintiff has been injured by Defendants' conduct and is entitled to restitution and
26 disgorgement of profits realized by Defendants, and each of them, as a result of their unfair
27 competition as defined in Business and Professions Code section 17200 et seq.

28 WHEREFORE, Plaintiff prays for relief as set forth below.

SEVENTH CAUSE OF ACTION

**Negligence
(Against All Defendants)**

83. Mr. Cuevas hereby realleges and incorporates by reference the allegations of paragraphs 1 through 82 as though fully set forth herein.

84. Each Defendant owed a duty of care to Mr. Cuevas to exercise reasonable care with respect to the solicitation, negotiation, processing and finalization of the refinance loan agreement. Atlas Realty/Financial Services, Samantha Trevino, and Alvin Silbernagel further owed a special duty of care as specialists with respect to mortgage brokering services. Among other things, Defendants owed a duty to comply with all statutory requirements, including, but not limited to, California Civil Code § 1632 and the Truth In Lending Act. Defendants breached their duties of care to Mr. Cuevas and failed to exercise reasonable care and skill in performing their mortgage brokering and lending services by, among other things: failing to explain the terms of the refinance transaction and loan agreement, failing to ensure that Mr. Cuevas understood the terms of the transaction and loan agreement, failing to provide a translation of the loan documents in Spanish; failing to submit truthful financial information, evaluate and confirm the accuracy of such financial information; and by failing to provide Mr. Cuevas with signed, accurate copies of the Right to Cancel Notice.

85. As a proximate result of Defendants' negligence and other breaches of fiduciary duty as alleged herein, Mr. Cuevas entered into a loan he could not afford on undisclosed terms and in doing so repaid an existing loan that contained prepayment penalty clauses, and has suffered and will continue to suffer damages in an amount to be proven at trial.

WHEREFORE, Plaintiff prays for relief as set forth below.

EIGHTH CAUSE OF ACTION

**Violation of California Consumers Legal Remedies Act, California Civil Code § 1750 *et seq.*
(Against All Defendants)**

86. Mr. Cuevas hereby realleges and incorporates by reference the allegations of paragraphs 1 through 85 as though fully set forth herein.

87. By their wrongful conduct as alleged herein, Defendants created, engaged in

1 and/or participated in unfair acts or practices in violation of the Consumers Legal Remedies Act.
2 California Civil Code section 1750 *et seq.*

3 88. By their conduct, Defendants engaged in unfair or deceptive acts or practices in
4 transactions intended to result in the sale of goods or services in violation of California Civil
5 Code section 1770, including but not limited to:

6 a. Representing that their goods or services have characteristics, uses, or
7 benefits which they do not have, in violation of section 1770(a)(5);

8 b. Advertising goods or services with intent not to sell them as advertised, in
9 violation of section 1770(a)(9);

10 c. Representing that the subject of a transaction has been supplied in
11 accordance with a previous representation when it has not, in violation of section 1770(a)(16).

12 89. Mr. Cuevas has as a direct and proximate result of Defendants' unfair or deceptive
13 acts or practices suffered and continues to suffer damages in a sum according to proof, not yet
14 ascertained, including, but not limited to, all amounts paid or to be paid.

15 90. Pursuant to section 1780, Plaintiff seeks to enjoin Defendants, and each of them,
16 from engaging in their unfair methods of competition or unfair or deceptive acts or practices, as
17 alleged herein.

18 WHEREFORE, Plaintiff prays for relief as set forth below.

19 **NINTH CAUSE OF ACTION**

20 **Unjust Enrichment**
21 **(Against All Defendants)**

22 91. Mr. Cuevas hereby realleges and incorporates by reference the allegations of
23 paragraphs 1 through 90 as though fully set forth herein.

24 92. By their wrongful acts and omissions, Defendants were unjustly enriched at the
25 expense of Plaintiff.

26 93. Plaintiff is entitled to restitution from Defendants and disgorgement of all profits,
27 benefits and other compensation obtained by Defendants through their wrongful conduct.

28 WHEREFORE, Plaintiff prays for relief as set forth below.

PRAYER FOR RELIEF:

1. Cancellation of the Deed of Trust and any and all mortgage documents dated May 31, 2006;
2. Rescission of the Deed of Trust and any and all mortgage documents dated May 31, 2006 and any and all agreements or contracts that made up the fraudulent transaction at issue;
3. An accounting, restitution and/or disgorgement;
4. Compensatory and general damages;
5. Special damages;
6. Punitive and exemplary damages according to proof;
7. Statutory damages pursuant to the Truth In Lending Act;
8. Costs and reasonable attorneys' fees;
9. Prejudgment interest;
10. Injunctive relief;
11. Such other and further relief as the Court deems proper.

Respectfully submitted,

Dated: August 31, 2007

LAW FOUNDATION OF SILICON VALLEY

/s/ Mona Motwani

Mona Motwani
Attorneys for Plaintiff
JUAN CUEVAS

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby requests a trial by jury as to each and every claim for which he is so entitled.

Dated: August 31, 2007

LAW FOUNDATION OF SILICON VALLEY

/s/ Mona Motwani

Mona Motwani

Attorney for Plaintiff

JUAN CUEVAS